SENATE JUDICIARY
Exhibit No. 14
Date 2-2-07
Bill No. SB 255

SENATE BILL 255
TESTIMONY OF DAVID OHLER, LEGAL COUNSEL
ON BEHALF OF THE
DEPARTMENT OF ADMINISTRATION

Mr. Chairman and Members of the Committee:

My name is David Ohler. I am Legal Counsel for the Department of Administration, Health Care and Group Benefits Division. The Department of Administration opposes Senate Bill 255.

Senate Bill 255 limits coverage the State Group Benefits Plan may provide to spouses and dependents of state employees and elected officials.. At a time when we as a society are looking at ways to provide health insurance to more of our citizens, Senate Bill 255 will reduce the number of persons covered by the State Group Benefits Plan. In addition, Senate Bill 255 conflicts both with existing state law and with existing federal law. Finally, Senate Bill 255 may violate the equal protection clause of the Montana and United States Constitutions.

Senate Bill 255 limits coverage to employees, their spouses and their dependents, which is the same groups that the current Plan covers. The problem arises in how spouses and dependents are defined in Senate Bill 255. Senate Bill 255 references two provisions of the Montana individual income tax code to define spouses and dependents.

Under the current Plan, you may place your spouse on the Plan effective on the date of your marriage. Senate Bill 255 provides that a "spouse" is determined under 15-30-134, MCA. Section 15-30-134 states that a person is your spouse if you are married at the close of the taxable year, which in most cases is December 31st. Thus, if you were married today, February 2nd, the fact of your marriage would not be recognized until December 31, 2007, and you would not be able to place your new spouse on the Plan until January 1st of 2008. Under the current Plan, you may keep your spouse on the Plan even though you may be legally separated. Under Senate Bill 255, if you are legally separated from your spouse, you are not considered to be married, and your separated spouse could not be placed on the Plan.

Senate Bill 255 becomes much more complicated and difficult to administer with respect to what dependents you may place on the State Plan. Under the current Plan, you may insure a number of dependents other than your spouse. You may insure a domestic partner, regardless of your sexual orientation, provided you share a primary residence and are financially interdependent. You may insure your children who are under 25 and unmarried, as well as the children of your spouse or domestic partner. You may also insure other children with whom you, your spouse, or your domestic partner maintain a parent-child relationship, such as court-ordered custody of a child or legal guardianship of the child. Finally, under the Plan you may insure dependent children regardless of their age if they are incapable of self-sustaining employment, such as the mentally or physically disabled.

Senate Bill 255 is more restrictive because it references the definition of dependent in the Montana individual income tax code. In order to be a dependent under Senate Bill 255, you must provide the dependent over half of their support during a calendar year. While under the current plan you can insure your unmarried children or stepchildren until age 25, regardless of the child's income, under Senate Bill 255, you may insure your child or stepchild only if you provide half of their support. In many instances, this means that any child not living at home, whether working at a minimum wage job or off to college, cannot be kept on your plan. It may also mean a stepchild receiving support from the non-custodial parent cannot be on your plan

Senate Bill 255 likewise limits domestic partners who may be insured under the Plan. If you provide more than half of the support for your domestic partner, and your partner's principal place of abode is your home, your partner may be on the Plan. If you do not provide more than half of the support, or if your partner's principal place of abode is not your home, they may not be on the Plan. So, for example, if your partner lives and works in Alaska most of the year, they could not be on the Plan.

Senate Bill 255 conflicts with existing state law. As written, SB 255 permits the Plan to insure only employees, their spouses and their dependents. However, 2-18-704, MCA, requires the Plan to also insure retirees and their spouses, surviving spouses and surviving children of a deceased employee, former legislators and their spouses and dependents, and former judges and their spouses and dependents. It is unclear whether existing law or the restrictions in Senate Bill 255 are controlling.

Senate Bill 255 conflicts with existing federal law. Federal law, commonly known as COBRA, requires the Plan to provide coverage to former employees and their spouses and dependents, while Senate Bill 255 prohibits coverage of these former employees and their dependents.

Finally, Senate Bill 255, creates several classes of people who are similarly situated except for their support, place of abode, and/or length of marriage. It is clear since the Supreme Court's decision in *Snetsinger* that benefits plans provided by the State must withstand scrutiny under the equal protection clause. At a minimum, there must be a rational basis for treating similarly situated people differently. I am not certain that there is a rational basis for the differing treatment Senate Bill 255 creates.

In conclusion, the Department of Administration opposes Senate Bill 255 because it eliminates health care coverage for state employees, their spouses and their dependents. It conflicts with existing state and federal law, and it is likely that the conflict will have to be resolved through litigation. Finally, by creating separate classes of dependents based upon the dependent's exercise of their fundamental constitutional rights to seek employment and to travel, and without any stated rationale for the differing treatment, the bill may be found to violate the equal protection clause of the Montana and United States Constitution. The Department therefore respectfully requests that you do not pass Senate Bill 255. Thank you.